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CORY TERRELL JONES,

Plaintiff,

-against-

NASSAU COUNTY, HEMPSTEAD POLICE  
DEPARTMENT and POLICE OFFICER  
MR. COUSIN BDG # 1217,

Defendants.

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FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.  
★ MAR 08 2019 ★  
LONG ISLAND OFFICE

On February 13, 2019, Magistrate Judge Brown issued a Report and Recommendation (the “R&R,” ECF No. 84) recommending that the Court grant the motion to dismiss filed by defendant Nassau County (ECF. No 69), grant in part and deny in part the motion to dismiss as to the Hempstead Defendants, comprising the Hempstead Police Department and Police Officer Anthony Cousins (ECF No. 68), and grant *pro se* plaintiff sixty (60) days to amend his complaint. The R&R was served on plaintiff by mail on February 13, 2019. (ECF No. 85.) The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R, with three days each for service and filing by mail, *i.e.*, by March 7, 2019. (R&R at 13.) The date for filing any objections has thus expired, and plaintiff has not filed any objection to the R&R. For the reasons set forth below, the Court adopts the thorough and well-reasoned R&R in its entirety, grants the motion to dismiss filed by defendant Nassau County, and grants in part and denies in part the motion to dismiss as to the Hempstead Defendants. In particular, the

motion is granted as to claims against the Hempstead Police Department and all claims against defendant Cousins, with the exception of the excessive force claim, which may proceed. The Court further adopts the recommendation to grant plaintiff sixty (60) days to amend his complaint.

Where there are no objections to a report and recommendation issued by a magistrate judge, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”); *cf.* 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) (“[B]ecause the waiver rule is non jurisdictional, we ‘may excuse the default in the interests of justice.’” (quoting *Thomas*, 474 U.S. at 155)).

Although plaintiff has waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the Complaint, the motion papers, and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the analysis and recommendations contained in the well-reasoned and thorough R&R in their entirety. Accordingly,

IT IS HEREBY ORDERED that the motion to dismiss filed by defendant Nassau County (ECF. No 69) is granted, and the motion to dismiss filed by the Hempstead Defendants (ECF No. 68) is granted in part and denied in part. Specifically, the motion is granted as to claims against the Hempstead Police Department and all claims against defendant Cousins, with the exception of the excessive force claim, which may proceed.

IT IS FURTHER ORDERED that plaintiff shall have sixty (60) days from the date of this Order to file an amended complaint. Plaintiff is warned that failure to file an amended complaint by that time will result in the case proceeding only against defendant Cousins on the excessive force claim. The dismissal of the claims against Nassau County and the Hempstead Police Department will be with prejudice.

IT IS FURTHER ORDERED that defendants serve a copy of this Order on plaintiff.

SO ORDERED /

S/ JOSEPH F BIANCO

JOSEPH F. BIANCO  
UNITED STATES DISTRICT JUDGE

Dated: March 8, 2019  
Central Islip, NY